

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Barbara Jo Mitchell

Chapter 7

Debtor(s).

BK 03-34151

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-3307

Barbara Jo Mitchell

Defendant(s).

NOTICE OF HEARING AND MOTION FOR DEFAULT JUDGMENT

Habbo G. Fokkena, United States Trustee, Plaintiff, by and through his undersigned attorney, Sarah J. Wencil, hereby moves the Court for a default judgment to be entered against Barbara Jo Mitchell (the defendant debtor) on the following grounds:

1. The United States Bankruptcy Court will hold a hearing on this motion at 2:00 p.m. on September 7, 2004, in Courtroom No. 228 B, United States Courthouse, at 316 N. Robert Street, in St. Paul, Minnesota.
2. Any response to this motion must be filed and delivered not later than September 1, 2004, which is three days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays), or filed and served by mail not later than August 26, 2004, which is seven days before

the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays). Local Bankruptcy Rule 9006-1. UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

3. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and FED. R. BANKR. P. 4004. This proceeding is a core proceeding.

4. The United States Trustee filed the above named complaint under FED. R. BANKR. P. 7001(4) to seek a revocation of the discharge entered in defendant debtor's bankruptcy case pursuant to 11 U.S.C. § 727(d)(3).

5. Upon information and belief, the defendant, Barbara Jo Mitchell, is a resident of Minnesota.

6. A Summons was issued on July 7, 2004, directing the defendant debtor to file an answer with the United States Bankruptcy Court within thirty (30) days pursuant to the Bankruptcy Rules. *See* Att. Ex. 1 (Docket Report in Adv. Case No. 04-3307). The United States Trustee mailed said complaint and summons to the defendant debtor and to her bankruptcy counsel on July 7, 2004. *See* Att. Ex. 2 (copy of Affidavit of Service). The certificate of service was docketed on July 7, 2004. *See* Att. Ex. 1.

7. An answer to the United States Trustee's complaint was due on approximately August 6, 2004. FED. R. BANKR. P. 7012(a).

8. As of the date of this Application, the defendant debtor has not filed an answer to the United States Trustee's complaint. *See* Affidavit of Default.

9. The United States Trustee made the following allegation in his complaint: The

defendant debtor commenced the present bankruptcy case on June 11, 2003. A discharge was granted on September 15, 2003. On April 22, 2004, the Chapter 7 Trustee filed a motion demanding that the debtor turnover the following property of the estate: copies of 2003 state and federal tax returns. On May 26, 2004, the Bankruptcy Court entered an Order directing the debtor to turnover copies of 2003 state and federal tax returns on or before June 7, 2004. As of this date, the debtor has failed to comply with the Bankruptcy Court's Order, dated May 26, 2004.

10. Pursuant to 11 U.S.C. § 727(a)(6)(A), the defendant debtor has failed to obey a lawful order of the court.

11. 11 U.S.C. § 727(d)(3) provides that a basis to revoke a discharge exists if the debtor (defendant) commits an act specified in subsection (a)(6) of Section 727.

WHEREFORE, the United States Trustee requests that the Bankruptcy Court grant the motion and enter a default judgment revoking the defendant debtor's discharge in bankruptcy case number 03-31451.

Dated: August 9, 2004

HABBO G. FOKKENA
UNITED STATES TRUSTEE
REGION 12

BY: /s/ Sarah J. Wencil
Sarah J. Wencil
Trial Attorney
1015 U.S. Courthouse
300 South Fourth St.
Minneapolis, MN 55415
(612) 664-5504
IA ATTY NO. 14014

Exhibit 1

Return to Search Results Page

U.S. Bankruptcy Court
District of Minnesota (St. Paul)

Adversary Proceeding #: 04-3307

Date filed: 7/7/04

Assigned to: CHIEF JUDGE GREGORY F KISHEL

Related Bankruptcy Case #: 03-34151

In Re: BARBARA JO MITCHELL,

Demand: \$0,000

Nature of Suit: 424

=====

HABBO G FOKKENA, U S TRUSTEE
C/O OFFICE OF US TRUSTEE
300 S FOURTH ST STE 1015
MINNEAPOLIS, MN 55415
* Plaintiff *

* Attorneys *

SARAH J WENCIL
US TRUSTEE OFFICE
300 S 4TH ST STE 1015
MINNEAPOLIS, MN 55415
612-664-5500

v.

BARBARA JO MITCHELL
2827 WIMBLEDON RIDGE
WOODBURY, MN 55125
SSN: XXX-XX-3605
* Defendant *

Proceedings include all events.

04-3307 In re: HABBO G FOKKENA, U S TRUSTEE and BARBARA JO

7/7/04 1 Complaint (04-3307) HABBO G FOKKENA, U S TRUSTEE vs.
BARBARA JO MITCHELL. NOS 424
Objection To Discharge (727) by Sarah Wencil on: Wed Jul
7 10:47:49 2004 (A052) [EOD 07/07/04] [04-3307]

7/7/04 2 Summons issued on BARBARA JO MITCHELL. Answer due 8/6/04
for BARBARA JO MITCHELL Non-Service of Process Deadline
11/4/04 (A052) [EOD 07/07/04] [04-3307]

7/7/04 3 Certificate of Service by Plaintiff HABBO G FOKKENA, U S
TRUSTEE of [2-1] Summons by BARBARA JO MITCHELL, [1-1]
Complaint NOS 424 Objection To Discharge (727) . (A052)
[EOD 07/07/04] [04-3307]

8/5/04 4 Pro Bono Notice to Defendants Re: [1-1] Complaint NOS 424
Objection To Discharge (727) . Court's Certificate of
Mailing. (aml) [EOD 08/05/04] [04-3307]

Exhibit 2

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Barbara Jo Mitchell

Chapter 7

Debtor(s).

BK 03-34151

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-3307

Barbara Jo Mitchell

Defendant(s).

AFFIDAVIT OF SERVICE

The undersigned hereby certifies under penalty of perjury that she is an employee in the Office of the United States Trustee for the District of Minnesota and is a person of such age and discretion as to be competent to serve papers.

That on July 7, 2004, she served a copy of the United States Trustee's Summons & Complaint to Revoke Discharge and Verification in the above-referenced case by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Minneapolis, Minnesota.

Addressee(s):

Exhibit 2

Barbara Jo Mitchell
2827 Winbledon Ridge
Woodbury, MN 55125

Becky A. Moshier
2233 University Ave. West Suite 420
St. Paul, MN 55114

Michael J. Iannacone
8687 Eagle Point Blvd.
Lake Elmo, MN 55042



Office of the United States Trustee
Terri Frazer

Subscribed and sworn to before
me this 7th day of July, 2004.


Notary Public

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Barbara Jo Mitchell

Chapter 7

Debtor(s).

BK 03-34151

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-3307

Barbara Jo Mitchell

Defendant(s).

AFFIDAVIT OF DEFAULT

I, Sarah J. Wencil, being duly sworn and under oath, state that:

1. I am employed as a trial attorney for the United States Trustee.
2. I am the attorney of record for the United States Trustee in the above entitled adversary proceeding.
3. The original Summons was issued on July 7, 2004 by the United States Bankruptcy Court.
4. The United States Trustee mailed the original Summons and the Complaint to the defendant debtor address listed on the petition.
5. As of this date, I have not been served with an answer by the defendant debtor.
6. A Docket report generated on August 9, 2004, shows that no answer was docketed

by the Bankruptcy Court within the time prescribed by the Bankruptcy Rules. *See*
Motion for Default (Att. Ex. 1).

This concludes my Affidavit.

Dated: August 9, 2004

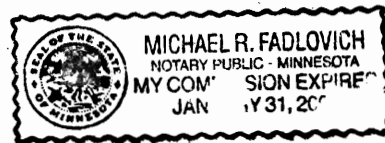


Sarah J. Wencil
Trial Attorney

Subscribed and Sworn Before Me
The 9th Day of August, 2004.


Notary Public

My commission expires on 1/31/05



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Barbara Jo Mitchell

Chapter 7

Debtor(s).

BK 03-34151

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-3307

Barbara Jo Mitchell

Defendant(s).

AFFIDAVIT OF IDENTIFICATION

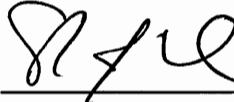
I, Sarah J. Wencil, being duly sworn and under oath, state that:

1. I am employed as a trial attorney to the United States Trustee.
2. I am the attorney of record in the above entitled adversary proceeding.
3. The name and address of the defendant debtor in the above entitled matter is listed on the Notice of Commencement of Case under Chapter 7 of the Bankruptcy Code (case number 03-34151), as the following: 2827 Wimbledon Ridge, Woodbury, MN 55125. *See Att. Ex. 1.*
4. Original Schedule I lists that the defendant debtor is over the age minority and is unemployed. *See Att. Ex. 2.*
5. According to the attached Schedule, the defendant debtor is not an infant and is not employed by a military organization.
6. The defendant debtor is represented by counsel in bankruptcy case number 03-

34151: Becky Moshier, 2233 University Ave W. Suite 420, St. Paul, MN .

7. Based on the foregoing, the United States Trustee is of the belief that the defendant debtor is competent.

Dated: August 9, 2004



Sarah J. Wencil
Trial Attorney

Subscribed and Sworn Before Me
The 9th Day of August, 2004.



Notary Public

My commission expires on 1/31/05

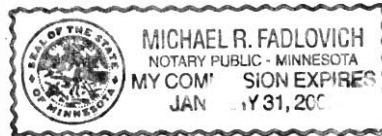


Exhibit 1

UNITED STATES BANKRUPTCY COURT

District of Minnesota

Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on 06/11/03.

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected by accessing the court's web site at www.mnb.uscourts.gov or at the bankruptcy clerk's office at the address listed below. **NOTE:** The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side For Important Explanations.

Debtor(s) (name(s) and address):

BARBARA JO MITCHELL
2827 WIMBLEDON RIDGE
WOODBURY, MN 55125

Case Number:
03 - 34151 - GFK

Social Security/Taxpayer ID Nos.:
470-58-3605

Attorney for Debtor(s) (name and address):

BECKY A MOSHIER
2233 UNIVERSITY AVE W STE 420
ST PAUL, MN 55114

Telephone number: 651-645-1211

Bankruptcy Trustee (name and address):

MICHAEL J IANNAcone
8687 EAGLE POINT BLVD
LAKE ELMO, MN 55042

Telephone number: 651-224-3361

Meeting of Creditors:Date: **July 14, 2003**Time: **10:30 am**

Location: **U S BANKRUPTCY COURT
U S COURTHOUSE RM 685
316 N ROBERT ST
ST PAUL, MN 55101**

Deadlines:Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts:
09/12/03

Deadline to Object to Exemptions:Thirty (30) days after the *conclusion* of the meeting of creditors.**Creditors May Not Take Certain Actions:**

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Please Do Not File A Proof of Claim Unless You Receive a Notice To Do So.**Address of the Bankruptcy Clerk's Office:**

U S BANKRUPTCY COURT
U S COURTHOUSE RM 200
316 N ROBERT ST
ST PAUL, MN 55101

Web address: www.mnb.uscourts.gov**For the Court:**

Clerk of the Bankruptcy Court:
PATRICK G. DE WANE

Hours Open: Monday - Friday 8:00 AM - 5:00 PM

Date: 06/11/03

Exhibit 2

In re Barbara Jo Mitchell,
Debtor

Case No. _____

SCHEDULE I. CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Debtor's Marital Status: Divorced	DEPENDENTS OF DEBTOR AND SPOUSE		
	NAMES None.	AGE	RELATIONSHIP
EMPLOYMENT: DEBTOR		SPOUSE	
Occupation	Unemployed	AGE - 53	
Name of Employer			
How long employed			
Address of Employer			

INCOME: (Estimate of average monthly income)

Current monthly gross wages, salary, and commissions (pro rate if not paid monthly)

Estimated monthly overtime

SUBTOTAL

LESS PAYROLL DEDUCTIONS

a. Payroll taxes and social security

b. Insurance

c. Union dues

d. Other (Specify)

SUBTOTAL OF PAYROLL DEDUCTIONS

TOTAL NET MONTHLY TAKE HOME PAY

Regular income from operation of business or profession or farm (attach detailed statement)

Income from real property

Interest and dividends

Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above

Social security or other government assistance (Specify)

Pension or retirement income

Other monthly income (Specify)

TOTAL MONTHLY INCOME

TOTAL COMBINED MONTHLY INCOME \$ **0.00**

DEBTOR

SPOUSE

\$ 0.00	\$ N/A
\$ 0.00	\$ N/A
\$ 0.00	\$ N/A

\$ 0.00	\$ N/A
\$ 0.00	\$ N/A
\$ 0.00	\$ N/A
\$ 0.00	\$ N/A
\$ 0.00	\$ N/A

\$ 0.00	\$ N/A
\$ 0.00	\$ N/A

\$ 0.00	\$ N/A
\$ 0.00	\$ N/A
\$ 0.00	\$ N/A

\$ 0.00	\$ N/A
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\$ 0.00	\$ N/A
\$ 0.00	\$ N/A

\$ 0.00	\$ N/A
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\$ 0.00	\$ N/A
\$ 0.00	\$ N/A

\$ 0.00	\$ N/A
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(Report also on Summary of Schedules)

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:

Exhibit 3

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Barbara Jo Mitchell
Debtor(s).

SIGNATURE DECLARATION

Case No. _____

- ☒ PETITION, SCHEDULES & STATEMENTS
☐ CHAPTER 13 PLAN
☐ SCHEDULES & STATEMENTS ACCOMPANYING VERIFIED CONVERSION
☐ AMENDMENT TO PETITION, SCHEDULES & STATEMENTS
☐ MODIFIED CHAPTER 13 PLAN
☐ OTHER(Please describe) _____

I [We] Barbara Jo Mitchell and _____, the undersigned debtor(s) or authorized individual, *hereby declare under penalty of perjury* that the information I have given my attorney and provided in the electronically filed petition, statements, schedules, amendments, and/or chapter 13 plan, as indicated above, is true and correct. I consent to my attorney electronically filing my petition, a scanned image of this declaration, statements and schedules, amendments, and/or chapter 13 plan, as indicated above, with the United States Bankruptcy Court. I understand that a scanned image of this declaration is to be converted to PDF, and either inserted as the last page in the electronic submission or electronically submitted within five days after the above-named documents have been electronically submitted.

☒ [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

☐ [If petitioner is a corporation or partnership] I declare under penalty of perjury that the information provided in the petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor. The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

Date: June 6, 2003

X Barbara Jo Mitchell
Signature of Debtor or Authorized Individual

X _____
Signature of Joint Debtor

Barbara Jo Mitchell
Printed Name of Debtor or Authorized Individual

Printed Name of Joint Debtor

Form ERS 1 (Rev. 5/02)

Exhibit 3

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Barbara Jo Mitchell

Chapter 7

Debtor(s).

BK 03-34151

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-3307

Barbara Jo Mitchell

Defendant(s).

AFFIDAVIT ON MERITS AND AMOUNT DUE

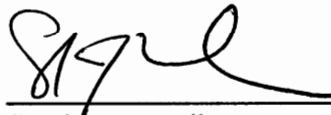
I, Sarah J. Wencil, being duly sworn and under oath, state that:

1. I am a trial attorney to the United States Trustee.
2. I am the attorney of record in the above entitled case.
3. A monetary judgment has not been requested in this adversarial proceeding. The relief sought by the United States Trustee is revocation of the defendant debtor's Chapter 7 discharge in case number 03-34151.
4. The United States Trustee has a legal basis upon which to request such relief pursuant to the authority of 11 U.S.C. § 727(d).
5. Said relief is supported by the following facts: The defendant debtor commenced the present bankruptcy case on June 11, 2003. A discharge was granted on September 15, 2003. On April 22, 2004, the Chapter 7 Trustee filed a motion demanding that the debtor turnover the following property of the estate: copies of

2003 state and federal tax returns. On May 26, 2004, the Bankruptcy Court entered an Order directing the debtor to turnover copies of 2003 state and federal tax returns on or before June 7, 2004. As of this date, the debtor has failed to comply with the Bankruptcy Court's Order, dated May 26, 2004.

6. Pursuant to 11 U.S.C. § 727(a)(6)(A), the defendant debtor has failed to obey a lawful order of the court.
7. 11 U.S.C. § 727(d)(3) provides that a basis to revoke a discharge exists if the debtor (defendant) commits an act specified in subsection (a)(6) of Section 727.
8. The United States Trustee has moved the Bankruptcy Court to revoke the discharge of the defendant debtor for failure to comply with the Bankruptcy Court's Order, dated May 26, 2004.

Dated: August 9, 2004



Sarah J. Wencil
Trial Attorney

Subscribed and Sworn Before Me
The 9th Day of August, 2004.



Notary Public

My commission expires on 1/31/05



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Barbara Jo Mitchell

Chapter 7

Debtor(s).

BK 03-34151

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-3307

Barbara Jo Mitchell

Defendant(s).

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER FOR JUDGMENT**

At St. Paul, Minnesota on this _____ day of _____,
2004, the United States Trustee's Motion for Default Judgment, which was supported by an Affidavit of Default, an Affidavit of Identification, and an Affidavit on the Merits as required by Local Bankruptcy Rule 7055-1 came before the undersigned.

Findings of Fact

1. Barbara Jo Mitchell, the defendant debtor commenced a bankruptcy case (Bankr. No. 04-31451) on June 11, 2003.
2. A discharge was granted in the bankruptcy case on September 15, 2003.
3. On May 26, 2004, the Bankruptcy Court entered an Order in the bankruptcy case

directing the defendant debtor to turnover the following property of the estate: copies of 2003 state and federal tax returns.

4. The defendant debtor has failed to comply with the Bankruptcy Court's Order, dated May 26, 2004.

Conclusions of Law

Pursuant to 11 U.S.C. § 727(a)(6)(A), the defendant debtor has failed to obey a lawful order of the court. 11 U.S.C. § 727(d)(3) provides that a basis to revoke a discharge exists if the debtor (defendant) commits an act specified in subsection (a)(6) of Section 727.

Order for Judgment

IT IS HEREBY ORDERED: the defendant debtor's discharge is revoked in bankruptcy case number 03-34151. LET JUDGMENT BE ENTERED ACCORDINGLY.

The Honorable Gregory F. Kishel
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Barbara Jo Mitchell

Chapter 7

Debtor(s).

BK 03-34151

Habbo G. Fokkena, United States Trustee

Plaintiff,

vs.

Adv. No. 04-3307

Barbara Jo Mitchell

Defendant(s).

AFFIDAVIT OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Trustee for the District of Minnesota and is a person of such age and discretion as to be competent to serve papers.

That on August 9, 2004, she served a copy of the attached: Motion for Default Judgement, Affidavit of Default, Affidavit of Identification, Affidavit on the Merits, and proposed Findings of Fact, Conclusions of Law and Order for Judgement, by placing said copies in a postpaid envelope addressed to the person(s), herein after named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Minneapolis, Minnesota.

Addressees:

Barbara Jo Mitchell
2827 Wimbledon Ridge
Woodbury, MN 55125

Becky A. Moshier
2233 University Ave. W. Suite 420
St. Paul, MN 55114

Michael J. Iannacone
8687 Eagle Point Blvd.
Lake Elmo, MN 55042

Terri Frazer

**Office of the United States Trustee
Terri Frazer**

**Subscribed and sworn to before
me the 9th day of August, 2004.**

[Signature]

Notary Public

My commission expires on 1/31/05

